MUNICIPAL CORPORATIONS—PUBLIC NUISANCE—RIGHT TO RESTRAIN AND ENJOIN.—The defendants operated a sugar refining plant from which quantities of smoke, soot, dust, and cinders escaped and fell upon the streets and public places of the city and upon the persons and property of the residents. The city council had power to determine and abate public nuisances but had passed no ordinance declaring the defendant's manufacturing plant a nuisance. In an action by the city to enjoin the maintenance of the nuisance, it was *held,* that in the absence of express statutory authority a municipal corporation cannot maintain an action in equity to enjoin a public nuisance of this character which does not specially affect corporate property, even though the private property of many citizens may be affected thereby. (HIRSCHBERG, J., dissenting.) *City of Yonkers* v. *Federal Sugar Refining Co.* (1910), 121 N. Y. Supp. 494.

The law is well settled that an individual can maintain an action for the abatement of a public nuisance only in case he sustains special injury. "The public remedy is ordinarily by indictment for the punishment of the offender, * * * or by bill in equity filed in behalf of the people." *Crowder* v. *Tinkler* (1816), 19 Ves. Jr. 616; *Lawton et al.* v. *Steele* (1890), 119 N. Y. 226, 23 N. E. 878, 7 L. R. A. 134, 16 Am. St. Rep. 813; *Griffith* v. *McCollum* (1866), 46 Barb. 561. But the authorities are not entirely harmonious upon the right of a municipal corporation to enjoin a public nuisance, when the city in its corporate capacity receives no damages of a special nature. The cases precisely in point are not numerous, but the decision in the principal case is supported by *Township of Belleville* v. *City of Orange* (1905), 70 N. J. Eq. 244, 62 Atl. 331; *Inhabitants of Winthrop* v. *New England Chocolate Co.* (1902), 180 Mass. 464, 62 N. E. 969; *Dover* v. *Portsmouth* (1845), 17 N. H. 200, 215. But a contrary doctrine is held in *City of Huron* v. *Bank of Volga* (1896), 8 S. D. 449, 66 N. W. 815, 59 Am. St. Rep. 769; *Village of Pine City* v. *Munch et al.* (1890), 42 Minn., 342; *City of Llano* v. *County of Llano* (1893), 5 Tex. Civ. App. 132, 23 S. W. 1008. As a municipal corporation is a governmental agency, a representative of the State in duty bound to protect its citizens, there seems to be no valid reason why in cases involving the health of the inhabitants it may not maintain an action in equity to abate a public nuisance. 1 Dill. Mun. Corp. Ed. 4, § 379; *Dover* v. *Portsmouth,* supra 215.

NEGLIGENCE—"TURNTABLE DOCTRINE."—The plaintiff's intestate was injured while playing on a turntable belonging to the defendant. It appeared that it was on private property but was near a private road much used by the public. Though the turntable was fastened it was neither locked nor guarded and the fastening was easily removed by a child. *Held,* that the defendant was not liable for the injuries to the child. *Reid* v. *Harmon* (1910), — Mich. —, 125 N. W. 761.

The "turntable doctrine" is that when a very young child is injured while playing on a turntable which the railroad company has left unguarded and so unsecured that children may put it in motion, the company is liable for the injury, notwithstanding the child is a technical trespasser. This doctrine

has been approved and followed by the United States Supreme Court in *Sioux City &c. R. Co.* v. *Stout,* 17 Wall. 657, 21 L. Ed. 745, by Alabama in *Ala. G. S. R. Co.* v. *Crocker,* 131 Ala. 584, by California, by Georgia, by Illinois in *Pekin* v. *McMahon,* 154 Ill. 149, by Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Carolina, Tennessee, Texas and Washington. It appears that the court of Michigan had not, until this action, passed on a turntable case, though in *Ryan* v. *Towar,* 128 Mich. 463, 87 N. W. 644, the supreme court expressly renounces the doctrine. In the recent case of *Millum et al.* v. *Lehigh & Wilkesbarre Coal Co.,* — Pa. —, 73 Atl. 1106, 8 Mich. L. Rev. 252, the general application of the doctrine of the turntable cases was applied. The attractiveness of a thing to a child amounts to an implied invitation. *Siddall* v. *Jansen,* 168 Ill. 43, 48 N. E. 191. The occupant of premises who induces others to come on it by invitation, express or implied, owes to them a duty to use ordinary care to keep the premises in safe condition. *John Spry Lumber Co.* v. *Duggan,* 80 Ill. App. 394.

PRINCIPAL AND AGENT—PURCHASE OF PRINCIPAL'S PROPERTY BY AGENT.—Plaintiff employed defendant to negotiate a loan to enable the plaintiff to prevent a sale of his real estate under foreclosure proceedings. Defendant did not get the loan. There was a public sale of the property, and the defendant, being the highest bidder, purchased the property. He paid for the property by securing a loan on the property as security. Plaintiff brought action to have a trust declared on the ground that defendant's fiduciary relation made a purchase by him invalid. *Held,* that defendant's relation to plaintiff was not such as would create a trust relationship. *Clark* v. *Delano* (1910), — Mass. —, 91 N. E. 299.

The decision is based on the rule announced in *Collins* v. *Sullivan,* 135 Mass. 461. It was there held that a trust will not be declared where the agent purchases the property of his principal, when the agent was employed for a collateral matter such as procuring a loan rather than to directly obtain the conveyance. This doctrine is supported by Mr. MECHEM in his work on AGENCY, § 460. But the rule announced in *Collins* v. *Sullivan* finds authority in the rule that parol evidence will not be admitted to show the real ownership when the agent has taken title in his own name. Tested by the law of Principal and Agent alone, the present case is not supported by the better authority. An agent must exercise the utmost good faith in the performance of his duties toward his principal, and cannot profit by his own neglect, wrongdoing, or default. MECHEM, AGENCY § 468; *Curts* v. *Cisna,* 7 Biss. 260; *Barton* v. *Moss,* 32 Ill. 50. And in cases of dispute the burden is on the agent to prove the bona fides of the transaction. In *Bowman* v. *Officer,* 53 Ia. 640, and *Page* v. *Webb,* 9 Ky. Law Rep. 868, 7 S. W. 308, it is held that an agent "to manage property" cannot purchase at a tax sale even where the principal has not furnished him with money to pay the taxes. An agency to obtain a loan is no more of a collateral undertaking than managing property, and it would seem that the rule announced by these cases, will be preferred to the holding of the present case.